

House Bill 1460

By: Representative Benfield of the 85th

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1 of Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia
2 Annotated, relating to foreclosure in general, so as to prevent the conditioning of a sale of
3 a foreclosed home upon the buyer's purchase of title insurance from a particular insurer or
4 upon the buyer's purchase of escrow services from a particular buyer; to provide for
5 legislative findings; to provide for related matters; to provide for an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 1 of Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated,
10 relating to foreclosure in general, is amended by adding a new Code section to read as
11 follows:

12 "44-14-160.1.

13 (a) The General Assembly finds and declares:

14 (1) Foreclosed properties have become a dominant portion of homes on the resale real
15 estate market;

16 (2) The recent troubled real estate market has resulted in the majority of homes available
17 for resale concentrating within the hands of foreclosing lenders and has dramatically
18 changed the market dynamics affecting ordinary home buyers;

19 (3) Preserving the fair negotiability of contract terms is an important policy goal to be
20 preserved in real estate transactions;

21 (4) The potential for unfairness occasioned by the resale of large numbers of foreclosed
22 homes on the market requires that protections against abuses be made effective
23 immediately;

24 (5) The federal Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Section 2601
25 et seq., creates general rules for fair negotiation of settlement services, prohibits

26 kickbacks, and specifically prohibits a seller in a federally related transaction from
27 requiring a buyer to purchase title insurance from a particular insurer; and
28 (6) Georgia law does not specifically prohibit a seller from imposing, as a condition of
29 sale of a foreclosed home, the purchase of title insurance or escrow services from a
30 particular insurer or provider.

31 (b) For purposes of this Code section, the term:

32 (1) 'Escrow agent' means a licensed real estate broker, an attorney who is a member of
33 the State Bar of Georgia, a title company, or a banking institution or savings and loan
34 company having trust powers and located in this state which is entrusted with the deposit
35 of trust funds with instructions to carry out the provisions of an agreement or contract.

36 (2) 'Escrow service' means the actions performed by an escrow agent.

37 (3) 'Seller' means a mortgagee who acquired title to residential real property improved
38 by four or fewer dwelling units at a foreclosure sale, including a trustee, agent, officer,
39 or other employee of any such mortgagee.

40 (4) 'Title insurance' means insurance of owners of real property or others having an
41 interest in such real property, or liens or encumbrances on such real property, against loss
42 by encumbrance, defective titles, invalidity, adverse claim to title, or unmarketability of
43 title by reason of encumbrance or defects not excepted in the insurance contract, which
44 contract shall be written only upon evidence or opinion of title obtained and preserved
45 by the insurer.

46 (c) A seller of residential real property improved by four or fewer dwelling units shall not
47 require directly or indirectly, as a condition of selling the property, that title insurance
48 covering the property or escrow service provided in connection with the sale of the
49 property be purchased by the buyer from a particular title insurer or escrow agent. This
50 Code section shall not prohibit a buyer from agreeing to accept the services of a title
51 insurer or an escrow agent recommended by the seller if written notice of the right to make
52 an independent selection of those services is first provided by the seller to the buyer.

53 (d) A seller who violates this Code section shall be liable to a buyer in an amount equal
54 to three times all charges made for the title insurance or escrow service. In addition, any
55 person who violates this Code section shall be deemed to have violated his or her license
56 law and shall be subject to discipline by his or her licensing entity.

57 (e) A transaction subject to this Code section shall not be invalidated solely because of the
58 failure of any person to comply with any provision of this Code section."

59 **SECTION 2.**

60 This Act shall become effective upon its approval by the Governor or upon its becoming law
61 without such approval.

62

SECTION 3.

63 All laws and parts of laws in conflict with this Act are repealed.